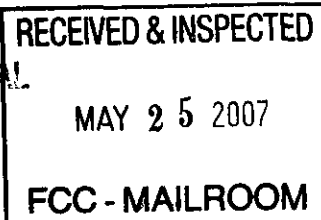


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**FAX cover page**

To: FCC  
Fax: 202 418 0187

From: Oshkosh Area School District, Oshkosh, Wisconsin 54902  
Telephone: 920 424 0395, Attn: Jason Demerath  
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Contains four pages (not including cover page)

This is an appeal for denial of 2006 funding from the SLD/USAC.

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Before the  
Federal Communications Commission  
Washington DC 20554

APPEAL

In the Matter of

Request for Review of a Decision by USAC Schools  
and Libraries Universal Service Support Mechanism in  
relation to the Oshkosh (WI) Area School District  
(BEN 33456)

CC Docket No. 02-6

REQUEST FOR REVIEW AND WAIVER OF DECISIONS  
OF THE UNIVERSAL SERVICE ADMINISTRATOR

May 25, 2007

*Appellant:*

Jason Demerath  
Executive Director Business Affairs  
Oshkosh Area School District  
215 South Eagle St., P.O. Box 3048,  
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920-424-0395 email: jason.demerath@oshkosh.k12.wi.us

**RE: Appeal for denial of 2006 funding for FRN: 1467145; FRN 1467323; FRN 1461330**

To Whom It May Concern:

The Oshkosh Area School District is appealing the denial of 2006 funding for the three above referenced funding requests. The three denials were in a funding commitment letter we received dated January 23, 2007.<sup>1</sup> We filed an appeal with USAC on March 20, 2007 and this was denied March 28, 2007.

**The core issue:** USAC has denied the three above funding requests claiming that there is a competitive bidding violation in which the associated Form 470 contains service provider contact information.

<sup>1</sup> On October 24, 2006, the Oshkosh Area School District filed an appeal with the Commission on the same basic issues as found in this appeal. The October appeal was for denial of 2005 funding for FRNs 1266817 (WiscNet) and 1266915, 1266968 (SBC Wisconsin). The 2006 appeal is still pending.

Our appeal to the Federal Communications Commission is divided into two parts; (1) Request to fund the two SBC Wisconsin requests, and (2) Request to fund the WiscNet request.

**(1) Request to fund the two SBC Wisconsin (aka Wisconsin Bell) requests (FRN 1467145 and 1467323)**

The reason USAC stated for denial of these two SBC Wisconsin requests is that these requests reference the same Form 470 (743560000552059) as the WiscNet request. USAC is not claiming the SBC funding requests had service provider information on the 470. It is only claiming that there was service provider participation in the WiscNet funding request. However, USAC claims that under the FCC's Mastermind decision<sup>2</sup> (May 23, 2000) the 470 is invalid for any funding requests on the same 470, even requests where there is no claim concerning service provider participation. We have reviewed closely the Mastermind decision and do not think the Commission intended to deny all funding requests under the circumstances in this particular situation. Paragraph 11 of the Mastermind decision states, "We believe that the participation of the [service provider] contact person in the bidding process may significantly affect the submission of bids by other prospective bidders." However, regardless of the Commission's ruling in the WiscNet issue below, any claim of WiscNet participation in the competitive bidding process for these telecommunication FRNs did not in any way compromise bidding for the requested telecommunications services because WiscNet is only an Internet Service Provider (ISP), not an eligible telecommunications provider (ETP). Therefore, WiscNet could not provide the services offered by SBC Wisconsin and thus had no effect on the bidding for these two telecommunication funding requests. Considering this, we request the following action by the Commission.

**Action Requested on the SBC Wisconsin Appeal Request (FRNs 1467145 and 1467323)**

The Commission clarifies its Mastermind decision as follows: When there are multiple funding requests on a Form 470, and it is clear that there is no service provider participation in at least some of those requests, that those requests can move forward and be funded. Our school district believes this clarification is straight-forward, fair to both applicants and service providers, and is wholly within the parameters defined in Mastermind. Therefore, we respectfully request the Commission to approve the two SBC Wisconsin funding requests.

Wisconsin public schools have been under state legislative imposed funding restrictions since 1995. Any funding denied to our district has a detrimental impact on the delivery of technology-related services to our children and teachers.

**(2) Request to fund the WiscNet request (FRN 1467323)**

We are well aware of the Commission's concerns about waste, fraud, and abuse in the E-rate program and that a fair and open bidding process is a key factor in helping guard against these concerns. According to FCC precedent, service providers cannot be involved with the preparation or submission of a Form 470, or with any steps in a competitive procurement prior to an award being made to the successful proposer. The crux of USAC's basis for the funding denial is its conclusion that because Mr. Colantonio is on the WiscNet board and because he also was the contact person for a Form 470, there was somehow improper service provider involvement or a conflict of interest due to his dual roles. USAC failed to appreciate or understand, however, that Mr. Colantonio's election to the Board of WiscNet is by virtue of his employment with the school district in his capacity as technology director for a K-12 institution. Indeed,

<sup>2</sup> Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc., CC Docket No. 96-45, Order, 16 FCC Rcd 4028, (released May 23, 2000).

Mr. Colantonio is not and never has been a WiscNet employee. He has no ownership interest in WiscNet and does not benefit financially in any way from a decision to choose WiscNet as the district's Internet provider.<sup>3</sup> As clearly documented in the paragraph below, Mr. Scott Colantonio's role in WiscNet had no bearing whatsoever in the district's selection of the successful vendor for Internet access service. Under all circumstances he represents the school district and not any provider in the 470 bidding process.

Prior to the hiring of Scott Colantonio in May 2004, OASD officials followed SLD procedures regarding selection of Internet service providers. In program years prior to 2004, WiscNet was selected based on SLD criteria using price as the highest weighted variable. From 2004 to current, OASD officials also followed SLD procedures regarding selection of Internet service providers. And again, WiscNet was selected based on SLD criteria with price as the highest weighted variable. In December 2004, WiscNet proposed a contract (\$20,136.22 per year on a one-year contract) which was significantly lower than the next closest contract (SBC: \$45,492 per year on a two-year contract or \$34,068 per year on a three-year contract). While the price gap narrowed as recently as December 2006, the trend continued. WiscNet proposed a contract (\$17,100 per year on a one-year contract) and AT&T proposed a contract significantly higher (\$28,968 per year on a two-year contract). Proposals from other vendors, including Infinity, Solarus, and One Communications, for the same Internet services reached as high as \$48,000 per year.

If the district accepted any other proposal, the SLD would rightly have denied the funding request based on FCC regulations<sup>4</sup> that price be the most important factor when selecting a service provider.

#### **Action Requested on the WiscNet Appeal Request (FRN 1467323)**

Based on the above information, the Oshkosh (WI) Area School District respectfully asks the Commission to take one of the following actions, listed in our priority order.

1. The Commission determines that there has been no violation of the competitive bidding regulations and cancels USAC's denial.
2. The Commission determines that there was a competitive bidding violation but waives its relevant rules because "there is no evidence at this time in the records that the petitioner engaged in activity to defraud or abuse the E-rate program."<sup>5</sup> And furthermore, the Commission finds that "the policy underlying these rules, therefore, was not compromised due to Petitioner's errors."<sup>6</sup> In granting a waiver, it cancels USAC's denial.
3. The Commission determines that there was a competitive bidding violation, but waives its relevant rules because it serves the educational interests of the Oshkosh (WI) Area School District and the

<sup>3</sup> We note that several members of the USAC board are employees of providers that benefit directly from the E-rate program. We think Mr. Colantonio's service on the WiscNet board is more removed from potential conflicts than the service of these providers on the USAC Board.

<sup>4</sup> FCC regulations requiring that "price must be the primary factor in considering bids." Paragraph 50 in the *Ysleta Order*, CC Docket No. 96-45, FCC 03-313, (released December 8, 2003).

<sup>5</sup> Paragraph 9, *Requests for Review of Decisions of the Universal Service Administrator by Academy of Excellence, Phoenix, AZ, Et Al.*, Schools and Libraries Universal Service Support Mechanism. Granted the Requests for Review (Dkt No. 02-6). Action by the Commission. Adopted: 04/18/2007 by Order (FCC No. 07-60, released May 9, 2007).

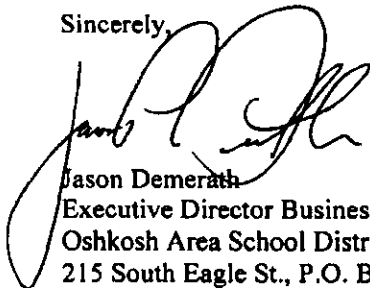
<sup>6</sup> Paragraph 9, *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, Et Al.*, Schools and Libraries Universal Service Support Mechanism. Granted the Requests for Review and/or Requests for Waiver (Dkt No. 02-6). Action by the Commission. Adopted: 04/18/2007 by Order (FCC No. 07-63), (released May 9, 2007).

interests of the schools, teachers and students it services.<sup>7</sup> And the "applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest."<sup>8</sup> Furthermore, any commitment adjustment will not benefit any other Internet provider. In granting a waiver, it cancels USAC's denial.

4. The Commission determines that there was a competitive bidding violation and it does not waive its regulations. If the Commission takes this action, the Oshkosh (WI) Area School District requests a substantial reduction in the amount denied, in accord with language in the FCC's *Fifth Order*.<sup>9</sup>

I hope after reviewing our appeal that the Commission will approve both the SBC Wisconsin and the WiscNet funding requests. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



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Executive Director Business Affairs  
Oshkosh Area School District  
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<sup>7</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, CC Docket No. 02-6, File Nos. SLD-487170, et al. (released May 19, 2006). Paragraph 2, the Commission recognizes that under the Communications Act of 1934, as amended, it is "helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services."

<sup>8</sup> *Id.* At paragraph 11.

<sup>9</sup> *Fifth Report and Order*. CC Docket No. 02-6 (released August 13, 2004). Paragraph 31, "Finally, we decline to implement a rule generally requiring *full recovery* [emphasis added] when a pattern of violations is discovered, recognizing the punitive nature of such a rule."